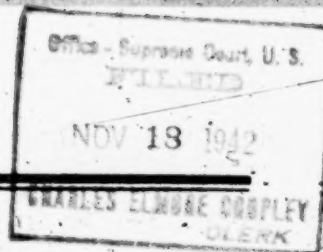


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IN THE  
**Supreme Court of the United States**

OCTOBER TERM, 1942.

No. 497.

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A. M. ANDERSON, RECEIVER OF THE NATIONAL BANK OF  
KENTUCKY OF LOUISVILLE, *Petitioner*,

v.

KATHERINE KIRKPATRICK ABBOTT, ADMINISTRATRIX WITH THE  
WILL ANNEXED, OF THE ESTATE OF DAVID J. ABBOTT,  
DECEASED, ET AL., *Respondents*.

**BRIEF OF THE COMPTROLLER OF THE CURRENCY  
AS AMICUS CURIAE.**

✓  
JOHN F. ANDERSON,  
*Attorney for Preston Delano,  
Comptroller of the Currency.*

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**BRIEF OF THE COMPTROLLER OF THE CURRENCY  
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Comes now, Preston Delano, Comptroller of the Currency of the United States, and by leave of Court first had and obtained, respectfully submits his brief as amicus curiae, in support of the petition for writ of certiorari filed by A. M. Anderson, Receiver of The National Bank of Kentucky of Louisville, Kentucky, in the above entitled cause.

## I.

**Foreword.**

Citation of the opinions below, statement concerning the jurisdiction of the Court to issue the writ of certiorari, specification of errors, summary of the facts, and statement of the questions presented and the reasons relied on for allowance of the writ, have been fully covered in the petition filed by the Receiver, and consequently reference is here made to the same in the interest of avoiding repetition.

## II.

**Reasons Urged by the Comptroller of the Currency in Support of the Receiver's Petition for Writ of Certiorari.**

(a) The National Bank of Kentucky, of Louisville, failed November 17, 1930. Its depositors have received dividends to date of 77 per cent. This alone evidences the fact that it had sustained heavy losses. It had been severely criticized in the National Bank Examiners' reports for several years. Copies of these reports were regularly sent to the Board of Directors of the bank. Letters from a Deputy Comptroller of the Currency were also sent to the Board of Directors with reference to the criticism of the Examiners. Copies of such letters and copies of the Examiners' reports will be found in the record in this case. (Exhibits 33-1 to 33-25, pp. 1275 to 1305). The letter of Deputy Comptroller Stearns, addressed to the directors, dated June 30, 1927, with reference to an examination completed on May 12, 1927, three years before the bank failed, is typical, and reads in part as follows:

"In addition to the estimated losses of \$137,775, which it is understood are to be charged off on June 30, the bank is carrying an excessive amount of slow and doubtful assets amounting to \$5,820,271, and \$601,618, respectively, which have been steadily increasing, in spite of the fact that a substantial amount of losses has been charged off following each examination in the past two years. Overdue paper is also ex-

cessive in amount, the aggregate being \$2,172,827, and includes statutory bad debts of \$968,658. The examiner has listed on the sheets following Page 6, a long list of large lines and other loans especially mentioned, which in his opinion require reduction, security, or supporting credit information. He has also listed several loans in excess of the legal limit, and a number of unwarranted overdrafts and cash items.

"It is evident that these matters have not been receiving sufficient attention, and it is urged that you review the report at your next board meeting, and take the necessary remedial measures."

If the owners of a national bank, in the condition indicated above, can under the law retain all the advantages of real ownership and at the same time evade a statutory individual liability simply by the transfer of bank shares for holding company shares, it would seem, on principle, that a way is open similarly to circumvent other provisions of law. Therefore, while the question presented in this case, as set forth in the petition of the receiver, primarily concerns the substantial rights of thirty thousand depositors of the National Bank of Kentucky, it also vitally concerns the Comptroller of the Currency in the administration of the National Bank Act with respect to bank stock holding companies. The domination of a number of state and national banks located in different communities and states through a bank stock holding company presents a very complicated problem of supervision and it is submitted that the matters and issues involved in this case are of general public interest and come within the class of cases indicated by the rules to be appropriate for review.

(b) An examination of the decided cases seems to indicate that this Court has not had occasion directly to consider the question of the liability of a bank stock holding company shareholder with respect to an assessment levied upon the bank shares. Except in the instant case, Federal, District, and Appellate Courts have uniformly held the holding company shareholders liable for the bank assess-

ment. This Court has several times denied certiorari in such cases. We have found no case, except the one presented here, where the holding company shareholders escaped such a liability. The decision of the Court of Appeals in the instant case seems to be in direct conflict with similar decisions in other circuits. This becomes important because of the fact that identical cases to the case at bar are pending in other circuits awaiting the outcome of this case.

### III.

#### CONCLUSION.

The Comptroller of the Currency therefore earnestly urges this Honorable Court to grant the petition for certiorari filed by the Receiver in the instant case.

Respectfully submitted,

JOHN F. ANDERSON,  
*Attorney for Preston Delano,*  
*Comptroller of the Currency.*